<u>REMARKS</u>

This application has been reviewed in light of the Office Action dated February 21, 2008. Claims 12-14, 35-37, 58-60, 81-83, 93-98, 100-107, 109-116, 118-125, 127, and 128 are presented for examination, of which Claims 12, 35, 58, and 81 are in independent form. Claims 12, 37, 60, 81, 83, 93, 100 and 119 have been amended to correct obvious typographical errors and matters of form. Favorable reconsideration is requested.

Claims 12-14, 35-37, 58-60, 81-83, 93, 95, 102, 104, 111, 113, 120 and 122 have been rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,222,081 (*Sone*); Claims 94, 96, 103, 105, 112, 114, 121, and 123 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over *Sone* in view of U.S. Patent No. 6,470,323 (*Suzuki*); Claims 100, 101, 109, 110, 118, 119, 127, and 128 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over *Sone* in view of U.S. Patent Application Publication No. 20020188499 (*Jenkins*); and Claims 97, 98, 106, 107, 115, 116, 124, and 125 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over *Sone* in view of U.S. Patent No. 6,795,823 (*Aklepi*).

Applicants submit that independent Claims 12, 35, 38, 58 and 81, together with the claims dependent therefrom, are patentably distinct from the cited prior art for at least the following reasons.

As explained in Applicants' November 26, 2007 Amendment After Final, one notable feature of Claim 12 is "calculate[ing] a plurality of estimated time of arrivals to a plurality of destinations for at least one in-transit unit having the product number and a due date associated with the plurality of estimated time of arrivals by which a diversion request must be completed to cause the quantity of in-transit units to be diverted, wherein the diversion request is based in part on the estimated time of arrivals." By virtue of this feature, multiple ETAs are

considered in making the diversion request. In addition, a due date associated with the multiple ETAs provides a deadline by which a diversion request must be made to cause the in-transit units to be diverted in time to realize the calculated ETAs.

Applicants respectfully traverse the characterization of *Scone* presented in the Office Action. *Scone*, as understood by Applicants, relates to a delivery scheduling system which can continuously monitor and update a delivery schedule for a shipper, and can notify a customer of a scheduled delivery. Apparently, the *Scone* system allows a customer to access an estimated delivery schedule time via a communication means prior to receiving a delivery alert. Using a browser-based client, the customer may view a current estimated delivery time and if the delivery is still waiting to be delivered, the customer may then submit a request to change a delivery parameter such as delivery time or location. Col. 7, lines 7-21. If the customer requests to change the delivery parameters, the *Scone* system determines if the request has created a change in the shipper's overall delivery schedule and if the change is in the delivery time, the program reschedules the delivery sequence and re-calculates the estimated delivery times for the remaining deliveries accordingly. Col. 7, lines 22-30 (*emphasis added*).

Thus, the *Scone* system provides the shipper ETAs for deliveries and, regardless of any ETA, provides a customer a deadline by which that customer's delivery parameters (*e.g.*, delivery time and location) must be entered. If the customer reroutes a delivery, the system recalculates ETAs for the rest of the shipper's deliveries accordingly. Nothing has been found in *Scone* et al. that would even remotely suggest or result in "a diversion control server including a processor configured to calculate a plurality of estimated time of arrivals to a plurality of destinations for at least one in-transit unit having the product number and a due date associated with the plurality of estimated time of arrivals by which a diversion request must be completed to

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cause the quantity of in-transit units to be diverted, <u>wherein the diversion request is based in part on the estimated time of arrivals</u>" as recited in Claim 12 (*emphasis added*). Indeed, the *Scone* system recalculates ETAs for the <u>other</u> deliveries only after a change in a delivery parameter has been made. Thus, the *Scone* system fails to calculate "a plurality of estimated time of arrivals to a plurality of destinations" on which "the diversion request is based," as recited in Claim 12.

Additionally, *Scone* completely lacks the ability to provide "a due date associated with the plurality of estimated time of arrivals [to a plurality of destinations]," as recited in Claim 1 (bracket referring to antecedent for "estimated time of arrivals" in the first claim recitation). As the Examiner concedes on page 4 of the Office Action, the due date in *Scone* simply indicates the amount of prior notice requested by the customer before a scheduled delivery is attempted. *See also* Col. 5, lines 49-51. Thus, at best, the *Scone* system accounts only for a single ETA to the current destination of the scheduled delivery.

Accordingly, Applicants submit that Claim 12 is patentable over the cited art, and respectfully request withdrawal of the rejection under 35 U.S.C. § 102(e).

Independent Claims 35, 58 and 81 are method, system and computer-readable storage medium claims respectively corresponding to Claim 12, and are believed to be patentable for at least the same reasons as discussed above in connection with Claim 12.

The other rejected claims in this application depend from one or another of the independent claims discussed above and, therefore, are submitted to be patentable for at least the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, individual reconsideration of the patentability of each claim on its own merits is respectfully requested.

A review of the other art of record has failed to reveal anything that, in Applicants' opinion, would remedy the deficiencies of the art discussed above, as applied against the independent claims herein. Therefore, those claims are respectfully submitted to be patentable over the art of record.

In view of the foregoing amendments and remarks, Applicants respectfully request favorable reconsideration and early passage to issue of the present application.

No petition to extend the time for response to the Office Action is deemed necessary for this Amendment. If, however, such a petition is required to make this Amendment timely filed, then this paper should be considered such a petition and the Commissioner is authorized to charge the requisite petition fee to Deposit Account 50-3939.

Applicants' undersigned attorney may be reached in our New York Office by telephone at (212) 218-2100. All correspondence should continue to be directed to our address listed below.

Respectfully submitted,

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